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STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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DYNO OVERLAYS, INC.  
Route 8, Box 8206  
Hayward, WI 54843

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE  
P.O. Box 8933  
Madison, WI 53708

Respondent.

- \* DOCKET NO. 94-M-997
- \*
- \* RULING AND ORDER
- \*
- \* AWARDING
- \* SUMMARY JUDGMENT
- \*
- \*

OCT 1995  
State of Wisconsin  
Department of Revenue  
Received  
Legal Staff

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**MARK E. MUSOLF, COMMISSION CHAIRPERSON:**

This matter is before us on a motion for summary judgment by the respondent, with a supporting brief by Attorney Veronica Folstad. Petitioner's response was filed by its president, Randy Schwartzhoff.

**FACTS**

1. Under date of February 14, 1994, petitioner filed with the respondent an Application For Exemption Of Waste Treatment Facility requesting exemption of a thermal oxidizer installed in the facility in 1993.

2. The 1994 claim for exemption was denied by the respondent because the application was not filed by the statutory due date of January 18, 1994. The petitioner did not file an objection to the denial of exemption under § 70.11(21), Stats.

3. On March 1, 1994, the petitioner filed a 1994 Manufacturing Personal Property Return (Form M-P). The thermal

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oxidizer was included on Schedule M as exempt machinery and equipment under § 70.11(27), Stats.

4. Under date of May 5, 1994, the respondent issued an assessment notice against personal property parcel # 79-57-236-P000007. Included in the assessment of this parcel was an assessment amount of \$379,600 reflecting the assessed value of the thermal oxidizer.

5. Under date of June 29, 1994, the petitioner filed an objection to the personal property assessment notice. The sole issue raised by the petitioner was that the thermal oxidizer unit should be exempt as machinery and equipment under § 70.11(27), Stats.

6. Under date of September 3, 1994, the State Board of Assessors issued a notice of denial of the objection.

7. Under date of November 3, 1994, the petitioner filed a petition for review with the Wisconsin Tax Appeals Commission in which the sole issue raised is whether the thermal oxidizer unit should be exempt as machinery and equipment under § 70.11(27), Stats.

8. Under date of January 6, 1995, the petitioner filed an Application For Exemption Of Waste Treatment Facility for 1995 for the thermal oxidizer. The exemption was granted for the 1995 tax year by the respondent.

9. In its response filed herein, the petitioner concedes that the thermal oxidizer does not qualify as exempt machinery and equipment under § 70.11(27), Stats., but urges that

its late-filed Application For Exemption Of Waste Treatment Facility under § 70.11(21) be allowed by this commission.

**RULING**

No material facts are in dispute. Therefore, pursuant to § 802.08, Stats., we must grant respondent's summary judgment motion if the record supports it as a matter of law.

The only unresolved legal issue between the parties is whether the respondent improperly denied petitioner's application for exemption as a waste treatment facility under § 70.11(21), Stats., because the exemption was not timely filed by January 18, 1994.

Section 70.11(21)(c) clearly provides:

**70.11 Property exempted from taxation. ...**

\* \* \*

**(21) TREATMENT PLANT AND POLLUTION ABATEMENT EQUIPMENT.**

\* \* \*

(c) A prerequisite to exemption under this subsection is the filing of a statement on forms prescribed by the department of revenue with the department of revenue. This statement shall be filed not later than January 15 of the year in which a new exemption is requested or in which a waste treatment facility that has been granted an exemption is retired, replaced, disposed of, moved to a new location or sold. [Emphasis added]

The petitioner did not comply with the express statutory prerequisite of filing the exemption application by January 18, 1994.<sup>1</sup> Nor did petitioner avail itself of the extension of time

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<sup>1</sup> January 18, 1994 was the statutory due date because January 15 fell on a Saturday, and Monday, January 17, was a legal holiday. § 990.001, Stats.

available under § 70.11(21)(d), Stats. Had petitioner done so, its February 11, 1994 filing would have been timely.

But because petitioner did not comply with the express requirements of either §§ 70.11(21)(d) or (c), Stats., the respondent properly denied the exemption request for 1994.

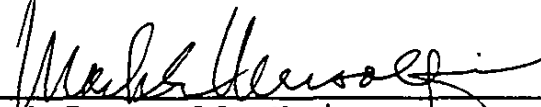
The respondent is therefore entitled to summary judgment on its motion as a matter of law, pursuant to § 802.08, Stats.


**ORDER**

The respondent is awarded summary judgment. The determination of respondent's State Board of Assessors denying petitioner's objection to its 1994 assessment is affirmed.

Dated at Madison, Wisconsin, this 12th day of October, 1995.

**WISCONSIN TAX APPEALS COMMISSION**

  
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Mark E. Musolf, Chairperson

  
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Joseph P. Metzner, Commissioner

  
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Don M. Millis, Commissioner

ATTACHMENT: "Notice of Appeal Information"